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William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20024

**RE: Comments: CS Docket No. 02-52, Appropriate Regulatory Treatment for
Broadband Access to the Internet over Cable Facilities**

Dear Acting Secretary Caton:

I am filing these comments on behalf of the Upper Darby Township Telecommunications Commission with regard to the Federal Communications Commission's March 15, 2002 Declaratory Ruling and Notice of Proposed Rule Making. By way of background, with over 77,000 residents, Upper Darby is the largest township in the Commonwealth of Pennsylvania. The Upper Darby Township Telecommunications Commission is charged with the responsibility of overseeing the telecommunications needs for the citizens of Upper Darby.

As a local franchising authority, Upper Darby Township is dismayed by the FCC's tentative declaratory ruling that cable modem service is an interstate information service, and is not a cable service subject to Title VI of the Communications Act. The Upper Darby Township Telecommunications Commission feels that this ruling will have a deleterious impact on local communities and consumers across the United States of America unless the FCC acts quickly to address certain key issues.

In particular, the FCC's tentative conclusion that local franchising authorities may not assess franchise fees on cable modem service amounts to nothing more than a taxpayer-funded donation to private industry. Public right-of-ways are assets that local governments are charged with protecting for the interest of all citizens. Experience has shown that, contrary to the tentative conclusions reached by the FCC, use of the public right-of-ways for cable modem service places an additional burden on the right-of-way. This burden comes in the form of increased need for access for the installation and maintenance of additional equipment. Moreover, it is unclear how the preclusion of a franchise fee for the use of public right-of-ways

would frustrate the FCC's goals related to the uniform regulation of cable modem service. Therefore, the Upper Darby Township Telecommunications Commission believes that the FCC's tentative rulings should be carefully considered and the FCC should not attempt to restrict local franchising authorities from enforcing franchise fees from the providers of cable modem service.

An additional concern of the Upper Darby Township Telecommunications Commission is the limbo created by the tentative ruling with regard to consumer protection and customer complaints. Many consumers believe that the local franchising authority is the primary source to direct customer service complaints related to cable modem service. In many instances, the local franchising authority is in the best position to address the consumers' needs *vis a vis* the local cable modem provider, as many consumer complaints are directly related to local service. Disturbingly, the FCC's tentative ruling seeks to strip the local franchising authorities' ability to require certain minimum levels of consumer protection for its citizens. While the local franchising authorities may be in the best position to address consumer complaints related to cable modem service, the FCC's tentative ruling precludes the local franchising authorities from taking any required actions to address these consumer complaints. Further, if the FCC determines that local franchising authorities should continue to address consumer complaints, it is inequitable to require action on behalf of the local franchising authorities without permitting the local franchising authorities to collect a franchise fee to fund their efforts. Again, this creates an untenable situation where the local taxpayers are forced to fund the cable modem industry.

In summary, the Upper Darby Township Telecommunications Commission is troubled by the tentative conclusions reached by the FCC. The ruling amounts to a public subsidy of private industry on the backs of the local taxpayers. While the goal of creating uniform standards and increasing cable modem access is a noble one, the rights of the local citizens must be protected in the process.

Respectfully submitted,

HOLSTEN & ASSOCIATES

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